

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|-----------------------------|---|---------------------|
| TIME WARNER CABLE INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 06-387-*** |
| |) | |
| USA VIDEO TECHNOLOGY CORP., |) | |
| |) | |
| Defendant. |) | |

JOINT STATUS REPORT

In response to the Court's Order of October 3, 2007, the parties submit the following joint status report. In the above-captioned litigation, the Complaint was filed on June 15, 2006, with an Answer and Counterclaim served on August 10, 2006, and a Reply to the Counterclaim served on August 30, 2006. On August 10, 2006, USA Video Technology Corp. ("USVO") served a Motion to Stay, Dismiss or Transfer, with an Opposition served on September 7, 2006, along with a Motion to Enjoin Duplicative Proceedings in Texas, to which USVO served a reply on September 14, 2006. Except for a brief status teleconference with Judge Jordan on September 13, 2006, there have been no proceedings involving the Court and there have been no rulings on the pending motions.

To the extent the Court seeks information regarding the litigation styled USA Video Technology Corp. v. Time Warner Cable, Inc. et al., Case No. 2-06-CV-239-RHC, United States District Court for the Eastern District of Texas ("the Texas litigation"), a copy of the most recent Scheduling Order (Docket No. 147) is attached. In the Texas litigation, the parties have completed the first four items on the Scheduling Order, namely submission of a technology

synopsis and all claim construction briefing. Initial disclosures have been made and discovery has begun. A Markman hearing will be held by the Court in Texas on the 31st of this month.

To the extent the Court seeks information regarding other litigation involving U.S. Patent No. 5,130,792, there are four other lawsuits all of which were or are pending in the District of Delaware, of which only one matter remains pending:

1. USA Video Technology Corp. v. Movielink LLC
Case No. 03-368-KAJ

In the Movielink litigation, the Court granted summary judgment of non-infringement in favor of Movielink, 354 F. Supp. 2d 507 (2005), and the Court of Appeals for the Federal Circuit summarily affirmed. *See* 2006 U.S. App. LEXIS 14699 (2006).

2. USA Video Technology Corp. v. Time Warner Inc. et al.
Case No. 06-737-SLR

In the Texas litigation, the Court held that it did not have jurisdiction over Cox Communications, Inc. and transferred the matter relating to Cox to this Court. This is the transferred case, which was dismissed without prejudice in January 2007.

3. Coxcom Inc. v. USA Video Technology Corp.
Case No. 06-394-***

This litigation was dismissed without prejudice in January 2007.

4. Comcast Cable Communications LLC et al. v. USA Video Technology Corp.
Case No. 06-407-***

This case is pending.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

USA VIDEO TECHNOLOGY CORPORATION

Plaintiff,

v.

TIME WARNER, INC., ET AL.

Defendants.

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CIVIL ACTION NO. 2:06-CV-239

JUDGE RON CLARK

AMENDED SCHEDULING ORDER

(Patent Cases)

The court finds it is necessary to revise the original scheduling order [Doc. #72] filed November 2, 2006

REVISED DEADLINES

| | |
|---------------------------|--|
| September 13, 2007 | Submit technology synopsis. |
| September 13, 2007 | Opening claim construction brief (P.R. 4-5(a)). |
| September 27, 2007 | Responsive claim construction brief (P.R. 4-5(b)). |
| October 3, 2007 | Reply claim construction brief (P.R. 4-5(c)). |

¹ If a deadline falls on a Saturday, Sunday, or a legal holiday as defined in Fed. R. Civ. P. 6, the effective date is the first federal court business day following the deadline imposed. All deadlines shall be as of 4:00 p.m., on the day specified.

October 15, 2007 Parties to file joint claim construction and chart (P.R. 4-5(d)). Parties shall work together to agree on as many claim terms as possible.

October 29, 2007 Possible tutorial at 10:00 a.m.

October 31, 2007 Claim construction hearing at 10:00 a.m. in Beaumont, Texas

November 19, 2007 Provide Initial Mandatory Disclosures of information directed solely to damages.
Deadline for Initial Mandatory Disclosure of all persons, documents, data compilations and tangible things, which are relevant to a claim or defense of any party and which has not previously been disclosed. This deadline is not an extension of earlier deadlines set out in this court's order or the Patent Rules, nor an excuse to delay disclosure of information. It is a "catchall" deadline for provision of all remaining information which may be relevant to a claim or defense of any party at trial.

December 21, 2007 Parties with burden of proof to designate Expert Witnesses other than claims construction experts and provide their expert witness reports, to include for ALL experts all information set out in Rule 26(2)(B).

January 14, 2008 Comply with P.R. 3-7. (Designation of Wilfulness Opinions).

January 14, 2008 Parties to Designate Expert Witnesses on issues for which the parties do not bear the burden of proof, and provide their expert witness report, to include for ALL experts all information set out in Rule 26(2)(B).

January 28, 2008 File Dispositive Motions and any other motions that may require a hearing. Regardless of how many dispositive motions a party files, each party is limited to a total of sixty pages for such motions. Each individual motion shall comply with Local Rule CV-7.

Responses to motions shall be due in accordance with Local Rule CV-7(e).

Note: Objections to any expert, including Daubert motions, shall be filed within 3 weeks after the expert's Report has been disclosed. Such objections and motions are limited to ten pages each.

January 28, 2008

Discovery Deadline. All discovery must be served in time to be completed by this date.

February 28, 2008

Notice of intent to offer certified records

February 28, 2008

Counsel and unrepresented parties are each responsible for contacting opposing counsel and unrepresented parties to determine how they will prepare the Joint Final Pretrial Order (See Local Rule CV-16(b) and Proposed Jury Instructions and Verdict Form (or Proposed Findings of Fact and Conclusions of Law in nonjury cases).

March 7, 2008

Video Deposition Designation due. Each party who proposes to offer a deposition by video shall serve on all other parties a disclosure identifying the line and page numbers to be offered. All other parties will have seven calendar days to serve a response with any objections and requesting cross examination line and page numbers to be included. Counsel must consult on any objections and only those which can not be resolved shall be presented to the court. The party who filed the initial Video Deposition Designation is responsible for preparation of the final edited video in accordance with all parties designations and the court's rulings on objections

March 7, 2008

Motions in limine due
File Joint Final Pretrial Order. See Local Rules Appendix D (Obtain form for Exhibit List from District Clerk's Office, or create an Exhibit List form that mirrors the District Clerk's form). Exchange Exhibits and deliver copies to the court. At this date, all that is required to be submitted to the court is a hyperlinked exhibit list on disk (2 copies) and no hard copies

March 21, 2008

Response to motions in limine due

File objections to witnesses, deposition extracts, and exhibits, listed in pre-trial order. (This does not extend the deadline to object to expert witnesses). If numerous objections are filed the court may set a hearing prior to docket call.

File Proposed Jury Instructions/Form of Verdict (or Proposed Findings of Fact and Conclusions of Law).

April 7, 2008

Docket call and Final Pretrial at 9:00 a.m.

Date parties should be prepared to try case. Provide court with two copies of most updated Exhibit list. Absent agreement of the parties, this should not have exhibits which were not listed in the Final Pre- Order, but may have some deletions depending on rulings on objections. At this date, the parties should be prepared to give the Deputy Clerk one hard copy of the exhibits.

April 8, 2008

9:00 a.m. Jury Selection and Trial

All remaining dates and provisions set out in the original scheduling order shall remain in full force and effect.

So **ORDERED** and **SIGNED** this 29 day of **June, 2007**.



Ron Clark, United States District Judge